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Lawyer argues Richland man not convicted because wrong name on form

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A lawyer says his client's second-degree burglary conviction should be tossed out because jurors in the Benton County case signed a verdict form showing a different name.

Joshua Jordan Graham, 27, cannot be sentenced for a crime when he has not been convicted of it, Gary Metro wrote in one of two motions.

Jurors returned a guilty verdict Dec. 21 against another man, either not noticing or choosing not to care that the wrong name had been entered on the printed document, the motion alleges. The erroneous name was for a career criminal who had a Benton County trial a few months ago.

Superior Court Judge Bruce Spanner should dismiss the burglary case or, as an alternative, vacate the conviction and grant Graham a new trial, Metro said.

The case will briefly return to court Thursday, but a full hearing on the matter is scheduled for Jan. 19 before Spanner.

Deputy Prosecutor Brendan Siefken told the Herald on Monday that he doesn't want to make an official comment on the issue before he has had time to respond to Metro's motions and a hearing is held.

Graham, of Richland, was charged with breaking into the Atomic Bowl business office early Jan. 16, 2011. Just minutes later, an Atomic Bowl/Jokers Casino employee went to deposit money in the office safe and found the door had been damaged and left open, court documents stated.

Surveillance video footage, which was played for the jury, reportedly shows Graham entering the office at 1:14 a.m. and "walking quickly around the room looking through drawers and crouching in front of the office safe," documents stated. He allegedly left after looking up and seeing the video camera.

Security officers recognized Graham from his pink T-shirt and pink-striped mohawk hairstyle and confirmed he had come into the club that night after showing his Washington identification card at the front door's ID scanner.

Graham reportedly testified at trial that he had a lot to drink that night and doesn't remember what he did.

The case went to the jury about 3:30 p.m. Dec. 20. The panel asked to re-watch the short video footage and later went home for the day after not reaching a verdict.

Jurors returned to the courthouse Dec. 21 to resume deliberations and at 9:38 a.m. filled out a jury inquiry saying they were "unable to come to a unanimous decision," according to the document in Graham's court file.

Spanner, who presided over the trial, was in Franklin County Superior Court on another matter, so Judge Cameron Mitchell stepped in.

Mitchell met with Siefken and Metro in court and announced that he had telephoned Spanner, who said he wanted the jury to continue because it had not deliberated for a sufficient amount of time, court records show. The jury inquiry was returned to the panel, with Mitchell advising it to continue "in an effort to reach a unanimous verdict."

In his motion, Metro said five minutes hadn't passed since the judge's order when jurors alerted the bailiff that they had reached a verdict.

Back in the courtroom, the clerk read the verdict form -- correcting the name out loud to say Graham -- then polled each juror to make sure it was their verdict in the case.

The clerk notified the judge and lawyers of the error after jurors had left the courtroom but while they reportedly still were inside the building. Nothing was done at the time to get the jury to fill out a corrected form, and a sentencing date was set for Graham.

The verdict form is created by the prosecutor as a part of jury instructions, which are submitted to the court for consideration. The defense is given a copy to review and can make any objections, but the final say is with the judge who gives the approved documents to the jury upon starting deliberations.

The form in this case has a heading of "State of Washington, plaintiff, vs. Joshua Jordan Graham, defendant."

But below that it reads: "We, the jury, find the defendant Anthony Joseph Speelman, guilty of the crime of Burglary in the Second Degree as charged in Count 1."

Speelman, 43, most recently was convicted in Benton County Superior Court in October of second-degree identity theft. He is doing time at Stafford Creek Corrections Center in Aberdeen.

Metro argues that because the judgment does not find his client guilty, the court has no authority in sentencing Graham.

"He was not found guilty by a jury of his peers of the offense charged," his motion reads.

"A jury foreman and the jury itself must take the time to read the jury form to make sure that it adequately represents their decision," the lawyer said. "Here, the jury foreman signed a jury

verdict that clearly states that Anthony Joseph Speelman was guilty of burglary in the second degree. Anthony Joseph Speelman was not on trial for burglary."

Metro added that a criminal defendant is entitled to a jury that pays attention to the evidence and the verdict.

"Here, the jury was either not paying attention or was playing games with the court. This can be construed as either jury misconduct or an irregularity in the proceeding," Metro wrote in his motion.

He also questioned if an individual or several panel members "were persuaded by intimidation or convenience" to change their mind and come back with a unanimous verdict so quickly after the jury said it was deadlocked.

A message left Monday for the jury foreman was not immediately returned.

Benton County Clerk Josie Delvin told the Herald that if her staff is in that situation, the proper procedure is to "stop and inform the judge that there is an error on the verdict form and hand it back to him and let him decide what to do."

Delvin pointed out that even though her deputy clerk told Judge Mitchell after the fact, the jurors had not yet left the building and the error could have been addressed with the panel pulled back into court.

Mitchell, who is the Superior Court presiding judge, said Monday that it would be inappropriate for him to comment on the matter, including whether the court has guidelines about what to do if something similar happens.

Graham is out of custody on \$10,000 bail. If the case proceeds to a sentencing hearing, he faces between one year and five months to one year and 10 months in prison for the burglary.

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